

### § 11.3

### 18 CFR Ch. I (4–1–13 Edition)

rate of return multiplied by the annual adjustment factor.

(1) *Adjusted per-acre value.* (i) Counties (or other geographical areas) are assigned a per-acre value based on their average per-acre land and building value published in the Census of Agriculture (Census) by the National Agricultural Statistics Service (NASS). The adjusted per-acre value is computed by reducing the NASS Census land and building value by the sum of a state-specific modifier and seven percent. A table of state-specific adjustments will be available on the Commission's Web site.

(ii) The state-specific modifier is a percentage reduction applicable to all counties or geographic areas in a state (except Puerto Rico), and represents the ratio of the total value of irrigated farmland in the state to the total value of all farmland in the state. The state-specific modifier will be recalculated every five years beginning in payment year 2016.

(iii) The state-specific modifier for Puerto Rico is 13 percent.

(2) *Encumbrance factor.* The encumbrance factor is 50 percent.

(3) *Rate of return.* The rate of return is 5.77 percent through payment year 2025. The rate of return will be adjusted every 10 years thereafter, and will be based on the 10-year average of the 30-year Treasury bond yield rate immediately preceding the applicable NASS Census. For example, for years 2026 through 2035, the rate of return will be based on the 10-year average (2012–2021) of the 30-year Treasury bond yield rate immediately preceding the 2022 NASS Census. If the 30-year Treasury bond yield rate is not available, the next longest term Treasury bond available should be used in its place.

(4) *Annual adjustment factor.* The annual adjustment factor is 1.9 percent through payment year 2015. For years 2016 through 2025, the annual adjustment factor is the annual change in the Implicit Price Deflator for the Gross Domestic Product (IPD–GDP) for the ten years (2014–2023) preceding issuance (2024) of the most recent NASS Census (2022). Each subsequent ten year adjustment will be made in the same manner.

(d) The annual charge for the use of Government lands for 2013 will be reduced by 25 percent for all licensees subject to this section.

(e) The minimum annual charge for the use of Government lands under any license will be \$25.

[Order 774, 78 FR 5265, Jan. 25, 2013]

### § 11.3 Use of government dams, excluding pumped storage projects.

(a) *General rule.* (1) Any licensee whose non-Federal project uses a Government dam or other structure for electric power generation and whose annual charges are not already specified in final form in the license must pay the United States an annual charge for the use of that dam or other structure as determined in accordance with this section. Payment of such annual charge is in addition to any reimbursement paid by a licensee for costs incurred by the United States as a direct result of the licensee's project development at such Government dam.

(2) Any licensee that is obligated under the terms of a license issued on or before September 16, 1986 to pay specified annual charges for the use of a Government dam must continue to pay the annual charges prescribed in the project license pending any readjustment of the annual charge for the project made pursuant to section 10(e) of the Federal Power Act.

(b) *Graduated flat rates.* Annual charges for the use of Government dams or other structures owned by the United States are 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces, 1½ mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours.

(c) *Information reporting.* (1) Except as provided in paragraph (c)(2) of this section, each licensee must file with the Commission, on or before November 1 of each year, a sworn statement showing the gross amount of energy generated during the preceding fiscal year and the amount of energy provided free of charge to the Government. The determination of the annual charge will

be based on the gross energy production less the energy provided free of charge to the Government.

(2) A licensee who has filed these data under another section of part 11 or who has submitted identical data with FERC or the Energy Information Administration for the same fiscal year is not required to file the information described in paragraph (c)(1) of this section. Referenced filings should be identified by company name, date filed, docket or project number, and form number.

(d) *Credits*. A licensee may file a request with the Director of the Office of Energy Projects for a credit for contractual payments made for construction, operation, and maintenance of a Government dam at any time before 30 days after receiving a billing for annual charges determined under this section. The Director, or his designee, will grant such a credit only when the licensee demonstrates that a credit is reasonably justified. The Director, or his designee, shall consider, among other factors, the contractual arrangements between the licensee and the Federal agency which owns the dam and whether these arrangements reveal clearly that substantial payments are being made for power purposes, relevant legislation, and other equitable factors.

[Order 379, 49 FR 22778, June 1, 1984, as amended by Order 379-A, 49 FR 33862, Aug. 27, 1984. Redesignated at 51 FR 24318, July 3, 1986; Order No. 469, 52 FR 18209, May 14, 1987; 52 FR 33802, Sept. 8, 1987; 53 FR 44859, Nov. 7, 1988; Order 647, 69 FR 32438, June 10, 2004]

#### § 11.4 Use of government dams for pumped storage projects, and use of tribal lands.

(a) *General Rule*. The Commission will determine on a case-by-case basis under section 10(e) of the Federal Power Act the annual charges for any pumped storage project using a Government dam or other structure and for any project using tribal lands within Indian reservations.

(b) *Information reporting*. (1) Except as provided in paragraph (b)(2) of this section a Licensee whose project includes pumped storage facilities must file with the Commission, on or before November 1 of each year, a sworn state-

ment showing the gross amount of energy generated during the preceding fiscal year, and the amount of energy provided free of charge to the Government, and the amount of energy used for pumped storage pumping.

(2) A licensee who has filed these data under another section of part 11 or who has submitted identical data with FERC or the Energy Information Administration for the same fiscal year is not required to file the information required in paragraph (b)(1) of this section. Referenced filings should be identified by company name, date filed, docket or project number, and form number.

(c) Commencing in 1993, the annual charges for any project using tribal land within Indian reservations will be billed during the fiscal year in which the land is used, for the use of that land during that year.

[Order 379, 49 FR 22778, June 1, 1984. Redesignated at 51 FR 24318, July 3, 1986; Order 469, 52 FR 18209, May 14, 1987; 52 FR 33802, Sept. 8, 1987; Order 551, 58 FR 15770, Mar. 24, 1993]

#### § 11.5 Exemption of minor projects.

No exemption will be made from payment of annual charges for the use of Government dams or tribal lands within Indian reservations but licenses may be issued without charges other than for such use for the development, transmission, or distribution of power for domestic, mining, or other beneficial use in minor projects.

[Order 141, 12 FR 8492, Dec. 19, 1947. Redesignated by Order 379, 49 FR 22778, June 1, 1984. Redesignated at 51 FR 24318, July 3, 1986]

#### § 11.6 Exemption of State and municipal licensees and exemptees.

(a) *Bases for exemption*. A State or municipal licensee or exemptee may claim total or partial exemption from the assessment of annual charges upon one or more of the following grounds:

(1) The project was primarily designed to provide or improve navigation;

(2) To the extent that power generated, transmitted, or distributed by the project was sold directly or indirectly to the public (ultimate consumer) without profit;

(3) To the extent that power generated, transmitted, or distributed by